

****THE HON'BLE MR JUSTICE L.NARASIMHA REDDY***

+Writ Petition No.8359 of 2007

% 02.07.2007

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Between:

The Fishermen Co-operative Society,
Rep. by its President

...Petitioner

And

The Co-operative Election Tribunal,
Rep. by its Presiding Officer, and others

...Respondents

! COUNSEL FOR Petitioner: Sri B. Aga Reddy,

^ COUNSEL FOR RESPONDENTS: Sri E.V.Bhagiratha Rao,

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> Head Note:

? CITATIONS:

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ORDER:

The petitioner challenges the order dated 15-03-2007 passed by the A.P. Co-operative Tribunal, Warangal, in O.P.No.1 of 2006. Respondents 2 to 54 (for short '*the respondents*') filed O.P., questioning the legality of the election, held to the Managing Committee of the petitioner-society, on 21-12-2005. Through the order, challenged in the writ petition, the Tribunal allowed the O.P., and had set aside the election.

The term of the previous Committee, elected on 22-05-2000; expired on 21-05-2005. Elections to the Managing Committee could not be held before the expiry of the term. Thereafter, a Person-in-Charge was appointed. Ultimately, the elections were held on 21-12-2005. The respondents pleaded that all of them figured as voters in the voters' list, prepared for the previous elections, and the Persons-in-Charge Committee, which held the office between 21-05-2005 and 21-12-2005, had effected unauthorized and illegal alternations and deleted their names. Elections conducted on 21-12-2005 were challenged only on the ground that they were conducted on the basis of a defective and flawed voters' list.

The petitioner contested the O.P. It was pleaded that the voters' list was prepared and published, as required under the relevant provisions of law, and no exception can be taken to it. It was also contended that, even assuming that there is any defect in the preparation of voters' list, it cannot constitute the basis for setting aside the election, which is otherwise valid and legal. The petitioner also pointed out that, even some of the dead persons were shown as parties to the election petition, and a substantial number of persons were not even members of the society, at any point of time.

Sri B. Aga Reddy, learned counsel for the petitioner, submits that the Election Officer was appointed by the Election Authority,

in accordance with Rule 22 of the A.P. Co-operative Societies Rules, 1964 (for short '*the Rules*') and the prescribed procedure was meticulously followed. He contends that some of the respondents approached this Court by filing writ petitions, complaining about the preparation of voters' list, and the elections were ultimately held, duly following the directions issued by this Court, as well as the relevant provisions of law. He submits that even if the deletion of the names of the respondents is found to be incorrect, it would, at the most, entail in restoration of their names in the voters' list, but the election cannot be set aside, on that ground.

Sri E.V. Bhagiratha Rao, learned counsel for the respondents, on the other hand, submits that a valid voters' list is *sine qua non*, for conducting elections, and since it was proved beyond any reasonable doubt, that the voters' list was defective, the whole election got vitiated. He contends that the Tribunal had accorded cogent reasons, in support of its conclusion, and the order does not warrant any interference.

The first ground, urged on behalf of the petitioner, is that the O.P., was filed by including the names of some of the dead persons, as petitioners. It is stated that the persons, who were shown as petitioners, at Sl.Nos.2, 10 and 23, of the elections petition, were dead, even by the time the election petition was filed, and in that view of the matter, the election petition ought to have been dismissed. It needs to be observed that, even assuming that what is pleaded by the petitioner is correct, the election petition was not liable to be dismissed on that ground. The reason is that, an election petition can be maintained even by a single individual, and the mere fact that some of the persons were found to be non-existent, by itself, cannot be a ground to dismiss the election

petition. This much, however, can be said that the parties and their counsel ought to have been very careful, to ensure that no such serious defect had crept in. Same can be said about the allegation, that some of the election petitioners were not even members of the society.

Voluminous oral and documentary evidence has been recorded by the Tribunal. It must be said to its credit, that a detailed and extensive discussion of the rival contentions has been undertaken, and even tabular statements were furnished, to summarize the findings. It can be safely said that the Tribunal had bestowed its utmost and proper attention to the area of controversy and passed a very-well reasoned order.

It is not in dispute that the only ground urged on behalf of the respondents was, that the elections were held on the basis of a defective voters' list. To certain extent, they were able to satisfy the Tribunal, that the deletion of the names from the electoral list was not proper. Rule 22 of the Rules prescribes a detailed procedure to be followed for conducting elections to the Managing Committees of the Societies. The manner, in which the voters' list must be prepared, is prescribed under Rule 22 (2) (b).

It reads as under:

“Rule 22(2)(b): The Election Authority shall appoint an Election Officer for each society at least forty five (45) days prior to the expiry of the term of the Managing Committee for the purpose of conducting elections. The Election Schedule shall be as prescribed below:

- (i) The Election Officer shall issue the communication of election and requisition for production of records and voters list to the society within three days from the date of receipt of his/her appointment orders.
- (ii) The Chief Executive Officer or President of the society where there is no Chief Executive Officer shall prepare and publish the list of members eligible to vote

within seven (7) days after receipt of the communication from Election Officer. It shall be village wise, with a map of territorial jurisdiction of society, arranging villages in seriatim starting from the society Head quarters to North East, maintaining contiguity, clockwise, indicating the Sl.No., Name of Member, Father's Name, Village/Locality, age, community, Sex (Male/Female).

- (iii) The Chief Executive Officer or President of the society shall invite the claims or objections from the members within seven (7) days thereafter.
- (iv) The Chief Executive Officer or President of the society shall communicate the final list of members eligible to vote to the Election Officer within three (3) days thereafter.
- (v) A copy of the list shall be supplied to any contesting candidate on payment of actual cost as may be fixed by the society.
- (vi) After receipt of the final list of members eligible to vote from the society, the Election Officer shall verify the cases and satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the Act and Rules and fix the date of Poll giving a clear fifteen (15) days election notice as prescribed in Form-1. The notice shall be signed by the Election Officer and bear the seal of the society.
- (vii) xxxx

From this, it is evident that, basically it is the duty of the President of the outgoing Committee, or the Chief-Executive Officer, to prepare and publish the list of members, eligible to vote. Once such a draft list is published, the aggrieved persons are expected to submit their representations, within seven days from the date of such publication. Thereafter, the final voters' list is published. The Election Officer is also expected to satisfy himself, that the list conforms to the criteria of eligibility.

The record does not disclose that the respondents have ever

had recourse to this procedure. They went on pointing their grievances before the Commissioner of Fisheries and this Court.

The net result was, that the Election Officer was satisfied about the list furnished to him and proceeded to conduct elections, that too, as per the directions issued by this Court.

Even where the voters' list is defective, or patently incorrect, it cannot constitute the basis to set aside the election, which is otherwise valid. If a person, whose name is deleted from the voters' list; is able to establish that the deletion was not proper, he would be entitled for the relief of restoration of his name in the list. Howsoever invalid such a deletion may be, it cannot constitute a ground to set aside the election. Though the Act and the Rules do not stipulate the grounds, on which an election can be set aside, from the analogy of the elections, held under the Representation of People Act, or A.P. Panchayat Raj Act, it would be clear that an election can be set aside, if only the results thereof have been materially effected, on account of any illegality. Minor lapses, which do not have any direct bearing on the results, cannot constitute the basis. This aspect of the matter does not appear to have been urged before the Tribunal.

If mere wrongful inclusions or deletions of names from the voters' list can be treated as a ground to set aside the election, very serious consequences would ensue. When the voters' list contains large number of voters, it is, but, natural that there would be defects here and there, be it, in the matter of inclusion or exclusion of names. An otherwise valid election cannot be invalidated, on account of such omissions or commissions.

As pointed out earlier, respondents did not plead any other ground, that would have the effect of vitiating the result of the election.

Even if the deletion of the names of the respondents from the voters' list was illegal, that could not have constituted the sole basis for setting aside the election of the Managing Committee.

For the foregoing reasons, the writ petition is allowed, and the order in O.P.No.1 of 2006 is set aside. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.02-07-2007.

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